



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 05-24	REQUEST FOR OPINION NO. 05-25
SUBJECT: CANDICE TRUMMELL, CHAIR NYE COUNTY COMMISSION	SUBJECT: GARY HOLLIS, MEMBER NYE COUNTY COMMISSION

A. JURISDICTION:

In her capacity as a member of the Nye County Commission, Candice Trummell is a public officer as defined by NRS 281.4365. As such, the Ethics Commission has jurisdiction over this complaint (RFO No. 05-24).

In his capacity as a member of the Nye County Commission, Gary Hollis is a public officer as defined by NRS 281.4365. As such, the Ethics Commission has jurisdiction over this complaint (RFO No. 05-25).

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Requests for Opinion 05-24 & 05-25 (TAB B)
- Reviewed Gary Hollis response dated June 10, 2005 (TAB C)
- Reviewed Agenda for Nye County Board of Commissioners Meeting for April 5, 2005; reviewed Verbatim Minutes of Nye County Board of Commissioners for April 5, 2005 meeting (excerpted) (TAB D)
- Reviewed resignation letter from Nye County Treasurer, Patricia Foster; reviewed letter of interest from Nye County Chief Deputy Treasurer, Toni North; reviewed "Nye County Board of County Commissioners Staff Report" regarding requested action to appoint Toni North as Treasurer; reviewed Resolution No. 2005-17 (TAB E)
- Reviewed various news articles in Pahrump Valley Times regarding the Nye County Treasurer position
- Contacted Candice Trummell by phone and e-mail to determine if she would be submitting a response; she did not submit a response after returning a signed

waiver of the statutory time to complete the investigation of the complaint pursuant to NRS 281.511(3) and NRS 281.511(4).

C. RECOMMENDATIONS:

Based on investigative activities, the Executive Director recommends the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481 (5)

SPECIFIC REASON:

There are no allegations or credible evidence of fact that amounts to or supports a violation by any public officer of the above provision of NRS Chapter 281.

D. SUMMARY OF REQUESTS FOR OPINION:

The requests for opinion allege violations of NRS 281.481(5) by Candice Trummell, Chair, Nye County Commission, and Gary Hollis, member, Nye County Commission. The complaint alleges Trummell and Hollis violated the Ethics in Government law by:

- Acting in collusion with one another by approaching their “personal friend,” Mr. Gary Budahl, informing him of the vacancy in the office of the Treasurer before the information was available to the general public, and encouraging him to show interest in the treasurer position;
- Precluding others that did have an interest in filling the vacancy; and
- Willfully disregarding consideration of appointing Chief Deputy Treasurer Toni North to the vacant position.

E. SUMMARY OF SUBJECTS’ RESPONSES:

As of April 26, 2006, Trummell has not submitted a response to the complaint.

In his response, Hollis denies all of the allegations set forth in the complaint. Specifically, Hollis provided the following information:

- March 2005 Nye County Treasurer Pat Foster tendered her resignation, and as a Nye County Commissioner, Hollis learned of the resignation and had the responsibility of appointing a person to fill the unexpired term of the vacancy.
- Budahl had run against Foster in the previous Nye County Treasurer election and was narrowly defeated. Budahl was an accountant and had experience in Nye County budgetary matters. Hollis suggested to Budahl that Budahl “throw his hat in the ring” for the County Treasurer appointment. Hollis did

not make the suggestion to Budahl for Hollis' or Budahl's pecuniary interest, and believes that Budahl would be an asset to Nye County.

- Hollis learned of Foster's resignation at the time she tendered it. Information about the resignation was reported in county newspapers shortly after the resignation was tendered.
- This complaint was filed on behalf of Chief Deputy Treasurer Toni North who admitted publicly [at the Commission Hearing of April 5, 2005] that she knew of the resignation about the same time as the [Nye County] Commission members.
- The decision to hire Budahl was made at the April 5, 2005, open and public Nye County Commission meeting. The filling of the vacancy was on the Meeting Agenda, and all five county commission members were in attendance (Hollis by phone). Approximately 60 pages of minutes of the meeting are devoted to this item, and it is uncontested that the matter had a fair and comprehensive hearing. At the end of the hearing, Budahl was appointed to fill the vacancy by an open and public vote [of the commission]. Hollis supported a suggestion to put the vacancy out for advertising so that all interested parties could submit applications.
- Hollis never colluded with Trummell over this or any other matter. This complaint was filed not for the truth of the matter asserted, but rather to retaliate against the Nye County Commission for failing to appoint Chief Deputy Treasurer Toni North to the Treasurer vacancy.
- Hollis has never used non-public information to advance his own or anyone else's pecuniary interest. When Hollis suggested that Budahl "throw his hat in the ring," Hollis believed Budahl was an individual who could greatly enhance Nye County's government.

F. PERTINENT STATUTES AND REGULATIONS:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

* * * * *

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

G. RESULTS OF INVESTIGATION:

Factual History:

Candice Trummell presently serves as Chair of the Nye County Commission. Gary Hollis is a member of the Nye County Commission.

On or about March 23, 2005, Nye County Treasurer Patricia Foster submitted a letter of resignation, effective April 8, 2005. Foster's term expires December 31, 2006. In her

resignation letter, Foster suggested that the Commissioners should appoint Chief Deputy Treasurer Toni North for the remainder of the unexpired term.

Chief Deputy Treasurer Toni North submitted a letter to the Nye County Commission dated March 23, 2005 expressing interest in being appointed to the unexpired term of the Treasurer.

At approximately the same time, Hollis informed Budahl of the upcoming Treasurer's vacancy and encouraged Budahl to express interest in being appointed to the unexpired term. (Budahl had run unsuccessfully against Foster in the previous County Treasurer election.)

No later than one week after Nye County Treasurer Foster submitted her resignation, the local news media published news articles regarding the Treasurer's resignation.

A Nye County Board of Commissioners video-teleconference meeting took place on April 5, 2005. Agenda item 28c was listed as an action item under "H/R and Risk Management" as follows: "Action – Discussion and possible decision to: 1) appoint Toni North as Treasurer to complete the unexpired term of Patricia Foster; 2) appoint Toni North as interim Treasurer until such time as the Board appoints a Treasurer to complete the unexpired term of Patricia Foster; 3) appoint Gary Budahl as Treasurer to complete the unexpired term of Patricia Foster; or 4) advertise for letter of interest for Treasurer to fill the unexpired term of Patricia Foster."

The Nye County Department of Human Resources Personnel Administrator requested and on March 30 the County Manager approved item 28c to be placed on the April 5, 2005 Agenda. In addition to Agenda item 28c, staff requested the following action: "Upon receipt of Patricia Foster's upcoming resignation of office and retirement and in accordance with NRS 245.170 & NRS 245.180, the Board shall appoint a suitable person who is an elector of the county to fill the vacancy until the first Monday of January after the next ensuing biennial election. Therefore, request is for the Board to either appoint Chief Deputy Treasurer Toni North or another capable person to complete the remainder of the unexpired term." Staff made the following recommendation: "Based on recommendation by retiring Patricia Foster and the current experience of Toni North, Chief Deputy Treasurer, [the Personnel Administrator's] recommendation would be that the Board appoint Toni North as Treasurer." (Additional recommended conditions of appointment are also listed in the Nye County Commission Staff Report.)

The Staff report references NRS 245.170 and NRS 245.180 regarding the county commission's authority. NRS 245.170, paragraph 2, states, in part: "... the board of county commissioners shall appoint a suitable person who is an elector of the county to serve the remainder of the unexpired term."

After interviewing both North and Budahl, receiving staff recommendation and public testimony, the Nye County Commission voted 3-2, to appoint Budahl to the unexpired

term. Hollis and Trummell were joined by Commission member Cox in voting to hire Budahl. Commission members Eastley and Carver voted against the motion.

Allegations regarding NRS 281.481(5):

NRS 281.481(5) states:

“If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.”

There is no credible evidence that suggests either Hollis or Trummell were acting on information unavailable to the public. The Treasurer’s staff apparently knew of the Treasurer’s decision to resign on or before the date of the resignation letter, and the local media published reports of the resignation within a week after. Additionally, there does not appear to be any credible evidence that the subjects acted on this information to further the pecuniary interest of either themselves or any other person. Upon learning of the Treasurer’s resignation, the Commission members began a search for “. . . a suitable person who is an elector of the county to serve the remainder of the unexpired term”(NRS 245.170). After conducting a public hearing on the matter, considering various options, and interviewing both North and Budahl, the Commission exercised its authority and made the appointment.

A review of the record (as contained in the meeting agenda request and verbatim minutes) simply does not support nor lend any credibility to the allegations set forth in the complaint. There is no evidentiary basis in support of the Commission further investigating the allegations.

H. CONCLUSION:

The Executive Director hereby recommends the panel find no just and sufficient cause exists for the Commission to hold a hearing and render an opinion on the allegations that the subjects violated NRS 281.481(5), and further that the allegations be dismissed.

DATED: April 27, 2006

Stacy M. Woodbury
STACY M. WOODBURY, MPA
EXECUTIVE DIRECTOR